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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91215246
Party	Plaintiff LVGV, LLC
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Attachments	Opposer's Response to Applicant's Motion for Protective Order.pdf(48346 bytes )

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LVGV, LLC,	:	
	:	
Opposer,	:	
	:	
	:	91215208
v.	:	91215215
	:	Opposition Nos.: 91215216
	:	91215246
Empire Resorts, Inc.,	:	91215247
	:	91215415
Applicant.	:	

**OPPOSER’S RESPONSE TO APPLICANT’S MOTION FOR PROTECTIVE ORDER**

Opposer, LVGV, LLC (“Opposer” or “LVGV”), through its attorneys, Ballard Spahr LLP, hereby submits its response to the Motion for Protective Order filed by Applicant, Empire Resorts, Inc. (“Applicant” or “Empire”), seeking an additional thirty (30) days to respond to Opposer LVGV, LLC’s First Set of Interrogatories, which LVGV served prior to the Board’s suspension Order.

Empire’s six motions for a protective order are yet another round of procedurally improper and vexatious filings in violation of the Board’s Order suspending the proceedings. LVGV respectfully requests that Empire not be permitted to file any further papers with Board until the suspension is lifted.

LVGV filed oppositions to Empire’s six applications to register the marks **Me.** and **M** for services and goods emanating from a destination casino resort in Classes 41, 43 and 28. On October 7, 2014, LVGV served consolidated document requests and interrogatory requests applicable to the six opposition proceedings. On October 8, 2014, the Board issued an Order suspending the six opposition proceedings pending the Board’s rulings on LVGV’s

Motion to Consolidate and Empire's six motions for partial judgment on the pleadings. On November 4, 5 and 6, Empire filed five motions requesting that the Board suspend Rule 2.127(d) so that Empire may file motions to compel discovery. Empire argued that the Board should compel discovery, notwithstanding its Order suspending the proceedings, because Empire would be "greatly prejudiced by any further delay" in receiving discovery from LVGV.

On November 13, 2014, LVGV responded to Empire's improper motions seeking permission to compel discovery by reiterating the point it had made to Empire numerous times over the past month – the parties' discovery obligations are suspended because the six proceedings are suspended. On November 20, 2014, Empire filed the instant six motions seeking an additional thirty (30) days to respond to LVGV's outstanding interrogatory requests. Empire's counsel claims that it is too busy litigating a patent case in New Jersey federal court to timely respond to LVGV's discovery and that it filed a motion with the Board instead of approaching LVGV's counsel to work out an extension because doing so would be "pointless" based on statements made in LVGV's recent opposition briefs filed with the Board.

Empire's motion is procedurally improper because it violates the Board's Order suspending the proceedings. Further, had Empire's counsel requested an extension of time instead of filing six improper motions with the Board, LVGV's counsel would have agreed to a time frame for Empire to respond to discovery once the Board lifts the suspension Order because the parties' discovery obligations are suspended. Indeed, LVGV made this identical request of Empire multiple times in October and November, explaining that the parties' discovery obligations were suspended, though Empire refused to agree to LVGV's requests and filed its motion to compel discovery instead.

Finally, it must be noted that Empire's position here is fundamentally inconsistent with its five motions seeking permission to compel discovery. Empire now states that it is too busy litigating other matters to respond to LVGV's 58 interrogatory requests. However, just two weeks ago, Empire contended that it would be greatly prejudiced by any further delay in receiving responsive documents and receiving responses from LVGV to Empire's 393 outstanding discovery requests. Empire, which cannot find the time to respond to 58 interrogatories, will not suffer any prejudice from receiving LVGV's documents and LVGV's motion responding to Empire's 393 discovery requests after the Board lifts its suspension Order because Empire apparently lacks sufficient time and resources to devote to these proceedings right now.

### **CONCLUSION**

For the foregoing reasons, Applicant's motion should be denied as moot because the parties' discovery obligations are suspended. Further, Applicant should be required to cease filing any further papers with the Board while the proceedings are suspended.

Respectfully submitted,

Date: November 25, 2014

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of Opposer's Response to Applicant's Motion for Protective Order in each of the above-captioned Opposition Proceedings was served by e-mail on November 25, 2014, upon Applicant's counsel:

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